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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,474	10/07/2005	Paul F McKee	36-1945	2192
23117 7590 04/03/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
ABBASZADEH, JAWIED A				
ART UNIT		PAPER NUMBER		
2115				
MAIL DATE		DELIVERY MODE		
04/03/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/552,474

**Applicant(s)**

MCKEE ET AL.

**Examiner**

JAWEED A. ABBASZADEH

**Art Unit**

2115

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-24 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 07 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 3/7/2006  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1-24 are presented for examination.

#### ***Specification***

The disclosure is objected to because of the following informalities: Page. 7, lines 15-16 state, "initialization parameter **to the** if such a task is not being performed." This statement seems to be a typo and should be corrected without introduction of new matter.

Appropriate correction is required.

#### ***Claim Objections***

Claims 1, 4, 5-8, 11, 14, 16-21, 23-24 objected to because of the following informalities: These claims contain variations of the word "initialise." It is suggested that the spelling of the different variations should be based on the word "initialize." Appropriate correction is required.

Claims 20-22 objected to because of the following informalities: These claims contain the word "programme." Is it suggested that this be changed to "program."

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 20-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 20-22 claims a "computer programme." This subject matter is not limited to that which falls

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within a statutory category of invention because it is not limited to a process, machine, manufacture, or a composition of matter. Instead, it includes software per se. Software per se does not fall within a statutory category since it clearly is not a series of steps or acts to constitute a process, not a mechanical device or combination of mechanical devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Shiragaki US 2002/0162045.

As to claim 1, Shiragaki a computer system having a plurality of components that can be initialised, wherein each component is configured to produce status data from which the level of need for that component to be initialised can be inferred, the status data having a predetermine level of need associable therewith, and wherein at least one component is configured to: receive status data from other components; make a comparison using the status

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data received from respective components; in dependence on the comparison, select one or more components for initialisation; and, issue initialisation instructions to the selected component(s) [0199-0205].

As to claims 16-17, 20, 23, 24, Shiragaki teaches these claims according to the reasoning set forth in claim 1 supra.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAWEED A. ABBASZADEH whose telephone number is (571)270-1640. The examiner can normally be reached on Mon-Fri: 7:30 a.m.-5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Lee can be reached on (571) 272-3667. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jaweed A Abbaszadeh/  
Examiner, Art Unit 2115  
3/30/2009

/Thomas Lee/  
Supervisory Patent Examiner, Art Unit 2115